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HR 2007 DEBATE - PRIVILEGED RESOLUTION

(by Cain)

HR 2007, suspending limitations on conference committee jurisdiction, **SB 7**.

[Representative Zwiener raised a point of order against further consideration of **HR 2007** under Rule 13, Section 9(g), of the House Rules on the grounds that the resolution suspending limitations on the conference committee does not specify in detail the reasons that the suspension of the limitations is being requested. The point of order was withdrawn.]

REPRESENTATIVE CLARDY: Thank you for the opportunity to lay out the resolution to go outside the bounds with **SB 7**. **SB 7** is a comprehensive election bill that is the result of reconciling two significantly different bills the house and senate brought to conference. We worked hard to come up with language that would resolve substantive differences, would eliminate duplication, and conform the bill with existing election law. The result is this conference committee report—out of bounds in some places but yet an earnest attempt to address the issues the committees in both chambers heard and to update the election in the most technically accurate and lawful manner. This bill expands mandatory early voting polling hours from nine to 12 hours for all counties over 30,000 people. It expands civil remedies for real-time election enforcement. It provides for poll watcher rights and regulations, creates stronger penalties for vote harvesters, and ensures registrars and clerks will maintain accurate and current voter rolls, something that we all want to see. We've provided updated election security with forms to track and cover chain of custody of ballots and cameras in the central counting station, in the early voting ballot board, and the signature verification rooms in all of our largest counties.

We're also asking our election officials to reconcile the number of voters and votes in writing at the close of tabulation. We also ask the secretary of state in this bill to create forms to help our election judges know what they need to fill out when they close the polls by giving them a checklist to ensure fairness, avoid uncertainty, and make sure all votes are cast timely. We also reform for the illegal voting statute and make sure that everyone who is convicted in a Texas court for an offense that affects their voting rights will be advised that they cannot vote and provides paperwork so they won't be mistaken about whether they can or cannot vote. In short, this bill makes it easier for Texans to vote, but for those determined to break the law, it makes it harder to cheat.

I would like at this time to go over some of the specific sections for which we found it necessary to go out of bounds. Looking at Section 2.04 of the bill adding 31.006 to the code, we require the secretary of state, after receiving or discovering information indicating that criminal conduct in connection with an election has occurred, to refer that information to the attorney general. Previously, the law required the same thing but only when an official complaint from a member of the public was filed with the SOS. Now, the secretary of state, when in the course of its duties comes across information that might indicate criminal conduct, can take that action independently. Those complaints go to the Office of the Attorney General. So as long as the secretary of state has reasonable cause to suspect a criminal conduct has occurred, this standard has not changed.

Moving forward to Section 2.505 of the bill concerning the enforcement of voter roll maintenance, it says that the secretary of state shall monitor each county's list of registered voters to ensure that no county has a number of registered voters in the county equal to or greater than the number of people eligible to register to vote in that county. If the secretary of state determines that a county has a number of registered voters equal to or greater than that number, the secretary of state shall notify the voter registrar in writing. Then, the actions of the secretary of state are very clear. First, the voter registrar has the opportunity to explain or provide a remediation plan once they're notified of a violation of this measure. It's a measure of quantifiable standard. And upon that, there is an opportunity to cure. That seems very reasonable. Following that and failing to take corrective action, it requires that the training, as developed by our secretary of state, be implemented and that the county who has failed to meet this standard be required to take it. And finally, if that is not corrected, then the secretary of state can withhold funding to that county and assess other similar penalties.

Moving back, if we look at Section 3.05 of the bill, this amends the Election Code to include spoiled ballots from a direct recording electronic voting machine and include it on the list of spoiled ballots tracked by election officials. The reason this is considered to be out of bounds is in conference we added that the secretary of state needed to prepare the forms in an appropriate manner so that we could track that listing of canceled ballots. It does not substantially change the purpose of this section. It just makes it clear that the secretary of state is going to be responsible to promulgate these forms.

Next, in Section 3.07 of the bill, we created a provision of the Election Code that orders the secretary of state to create a checklist or guidelines for election judges to help them when they close the polls. Conversations with our conferees were clear that we needed guidance from the secretary of state related to the closing of the polls—that those people who showed up to vote toward the ending of the deadline would have time to vote.

REPRESENTATIVE J. GONZÁLEZ: Will the gentleman yield before time runs out so I can ask a few questions on the resolution?

CLARDY: Not at this time. Thank you for your question, but no. It's important that I move through these amendments. There were significant portions where we went out of bounds. I feel obligated to the membership and to the body to explain these. Thank you, but not at this time.

J. GONZÁLEZ: So I would like the opportunity to ask questions because there are significant changes. I think there's 22 substantive additions, and so I think that it's important that the body hear that debate back and forth. So I would like the opportunity before time runs out to be able to ask my questions.

CLARDY: Thank you, Mr. Speaker, but not at this time. I want all the body to hear these explanations before we take questions.

SPEAKER PHELAN: Not at this time, Ms. González.

CLARDY: So moving forward to Section 3.07 of the bill, we created a provision within the Election Code that orders the secretary of state to create a checklist or guidelines for election judges. In these conversations, it became clear that we needed this to address these issues, as I said a moment ago, about the closing of the polls—that we protect the chain of custody of the ballots but we allow those people who show up who may not have voted at that exact moment and time to be able to vote. And we ask the secretary of state to provide those forms that would be necessary to do that.

Next, in Section 3.10, this was not in **SB 7** from the senate. What we did here is that the bill eliminates polling times to the hours that a county clerk's office is open but it mandates the hours between 6 a.m. and 9 p.m. with a minimum of 12 hours of voting. So instead of a 7 a.m. to 7 p.m., we allow 6 a.m. to 9 p.m.—additional time hours for voting.

In Section 4.06 of the bill, we add a provision—it's not new but it's a resolution. But it tweaks language that was in both bills. There's reconciliation of who can apply for the relief. But also, the senate version included that this concerns poll watchers and the authority who appointed them and the house version included only the watcher. It became clear in conversations with conferees that both sides intended for the watcher and the authority who appointed them to be able to seek relief, so we incorporated that into our final revisions. Also, there's a reconciliation of the type of relief requested. The senate version included only injunctions. The house version included injunctions and writs under the Election Code. So in this reconciliation, we included both the injunctions and the writs.

Moving forward next to Section 4.16, again, this is not new. It's a reconciliation of house and senate positions. The senate version provision provided an automatic recount of the number of votes cast when that exceeds the number of voters in a precinct. The house did not have that provision. The issue that arose and will be looked at is that we would've triggered recounts repeatedly over how we process military overseas ballots, which was not the intent. This cures that. We made inquiries with the secretary of state's office and were told we could not currently create a new precinct for those overseas ballots.

We move to Section 5.01. That clarified the definition of disability and reconciled the eligibility for early voting by mail. The other portions of Section 5 likewise harmonize existing Election Code regarding the application for and the casting of ballots by mail. Section 5.15 was the part of the section of the code that allowed the early voter ballot board and the senior check members to take notes, which previously they were unable to do. This will allow them to take notes as

they compare signatures from those who have voted early by mail and compare those with the information available to see if they conform and it appears that that ballot should be counted because it was signed by the same person.

In Section 8.04 of the bill, we amended 232.008 of the Election Code, and that changes the deadlines for election contest. This was an important change we made to the law. It changes the deadlines by which a contestant can file their challenge. A contestant has five more days if they're challenging a primary—

REPRESENTATIVE C. TURNER: Members, and those watching—because I think there's probably more eyes on this body tonight than there normally are—I want to explain what's going on here. This relates to **SB 7**, the voter suppression bill, but we are not on that bill yet. This is a privileged resolution. The resolution, under our rules, is necessary because the conference committee for **SB 7**, the five senate conferees and the five house conferees, met—well, some of them met—and wrote language that was neither in the house-passed version of **SB 7** nor in the senate-passed version of **SB 7**. It's entirely new language that has never been debated on the floor of this house, never been debated on the floor of the senate, and was written and agreed upon not by all the conferees but by the republican conferees behind closed doors with no notice to this body or much less to the public. And now, as the sun sets and we are less than four hours from our deadline to pass bills in this legislative session, bringing this resolution to the floor of this house, asking this body to take this already horrific bill and make it even worse, that's what an out of bounds resolution does—is adding language in that's not in either version of the bill.

Now, I think this entire bill is out of bounds to begin with, but let's talk about what this so-called out of bounds resolution does. First of all, it's 20 pages. This is not just a simple sentence here or there or a tweak here and there. It's 20 pages of new language intended to make it harder to vote in the State of Texas. So the first major thing it does is it provides the Texas secretary of state new powers to conduct so-called voter roll maintenance. Well, what does that mean? Does this body remember two and a half years ago when the previous secretary of state was caught trying to conduct a voter purge of voters—Texas voters—and remove them from the voting rolls and plaintiffs had to go to federal court to stop him and they did because they won? This bill, in spite of the secretary of state's office having a terrible track record when it comes to voter rolls, gives the secretary of state more power over your local county voter registrars. It's your local county officials who get to make these decisions right now. They no longer do. They're subservient to the republican-appointed secretary of state under this out of bounds resolution.

There's a lot of egregious things in this resolution. I'm going to go through them chronologically. I think this is the most egregious. Many of us are familiar during the early voting period with "souls to the polls." What that means, for anyone who's not aware, is that there is a great tradition in the African American church in this country that after services on the Sunday of early voting, voters leave the service and go to the nearest early voting polling place to cast their votes to make their voices heard, to follow in the example and the footsteps and the leadership provided by Dr. King and so many others, John Lewis, who fought

and bled for the right to vote. It's a way to honor their sacrifice by casting those ballots however they choose to cast them but doing that as a community after worship on Sunday. So what this resolution says is that all of a sudden now, you can't have early voting begin on Sunday until 1 p.m. So if you are at that early 7 a.m. service or you're at the 9:30 a.m. service or the 11:15 a.m. service, you're not going to be able to go vote right after church. You're going to have to wait. And when you do get there, guess what? There's going to be a line. There's going to be a line to be able to cast your vote on the only Sunday of early voting. That's the point. You make it harder to vote by changing the hours and you make it harder to vote by creating a line when people get there to vote. It's shameful.

The next egregious provision is on poll watchers. We've talked on this floor before about partisan poll watchers being sent into predominantly African American and Hispanic communities to intimidate and to harass the voters and in some cases the election officials. I told my story on this floor before from my time in Tarrant County many years ago. Well, that's exactly what the Republican Party did, and they admitted to it. They were sending them into southeast Fort Worth into the African American part of town. They described them as "problem areas." We saw a leaked video a few months ago from Harris County where the Harris County Republican Party said, we are trying to recruit brave people who will go into these really scary areas in Houston to make sure that the integrity of the election is upheld. Please. They're looking for people who are willing to go and intimidate black and brown voters, and this resolution makes it easier for them to do that.

On vote by mail, it's not easy to vote by mail in this state to begin with. We know that. But this bill's going to make it more difficult if this resolution is adopted because it's changing the definition of disability. So right now, you have to be 65 years of age or older or disabled. This is going to make it very specific how you can be qualified to vote by mail on the basis of disability. The Texas Supreme Court ruled last year, when many people were trying to vote by mail during COVID because they didn't want to get sick, that a voter's word is good enough. If the voter believes they can't go vote because of a threat to their health or to their safety, that's good enough under the law. This resolution says that's no longer good enough. We're going to make people when they return a ballot by mail to include their driver's license number or the last four digits of their social security number on it. Why? I don't know why. I've never heard of a problem before that we couldn't determine if a vote was valid because we didn't have someone's driver's license number. It's another intimidation tactic.

And then there's this one—overturning the election. This is on page 15, members, of the resolution. So now, we're going to have a provision that says, and I'll read from the resolution, "If the number of votes illegally cast in the election is equal to or greater than the number of votes necessary to change the outcome of an election, the court may declare the election void without attempting to determine how individual voters voted." So members, are you okay with that? Are you okay with a judge being able to overturn an election, perhaps your own election, simply because the math says that well, you know, we think that there's some illegal votes, and the margin was kind of close, and I don't have

to prove how people voted, but you can overturn the election—are y'all really okay with that? That's what this resolution would allow for. So members, this resolution is far afield from either the house-passed bill or the senate-passed bill. That bill is bad and egregious enough as it is. We don't need to make it more egregious by going outside the bounds here at literally almost the eleventh hour on the second-to-last day of the legislative session. I ask you to vote no on this resolution.

REPRESENTATIVE BECKLEY: That last section where you were talking about the judge overturning elections, we never heard that in committee—not a version of that. That has not been vetted by the people of Texas. That is just magically here. Were you aware of that?

C. TURNER: Well, I was aware that it had never been discussed in the Elections Committee, which I know you have served and worked hard on all session. It's really never been discussed on the floor of this house. I don't believe it had been discussed in the senate, although I'm less sure of that. But I know for certain it was not in either version of **SB 7** passed by either this house or that senate earlier this session. And it should absolutely not be on this floor today.

BECKLEY: Do you feel like that is fair to the people of Texas that this has not been vetted by the people of Texas in the processes that we uphold in this body?

C. TURNER: It's absolutely unfair, Representative Beckley, to the people of Texas, to the voters of Texas. We have election contests provided for under our laws today. And there are members of this house who have gone through election contests—in rare circumstances, but it does happen. The laws provide for an election contest so both parties—both candidates, as the case may be—can make their case and a judge can make an ultimate determination. This language is completely unnecessary and extraordinary in its breadth of how an election could be overturned.

BECKLEY: Do you think that was based on the big lie?

C. TURNER: I do. I think—you know, I've talked about that before on this bill, and I'll probably be talking about that again this evening on this bill. But the reality is people have promoted the big lie that somehow Donald Trump actually won the election that we know that he lost last year.

REPRESENTATIVE BUCY: I want to first thank Chairman Turner who just walked us through so many terrible things in this resolution that's before us. I want to really sink down into one section that he closed with. That's how important it is. I see everyone's on their cell phones and reading other things, and I think it's important that we think about what we're about to vote on. This is a section that was added. We're going outside of the bounds. That means that we never had this in either the senate bill or the house bill. There's 150 of us on this floor, but it's not 150 people that we represent. We represent 29 million Texans. When we walk around, we walk around with the impact of almost 200,000 people for each of us here, 29 million Texans whose voices are about to be hindered at the ballot box if we pass this resolution.

Section 232.063 on page 15, it says, "Overturning Election. If the number of votes illegally cast in the election is equal to or greater than the number of votes necessary to change the outcome of an election, the court may declare the election void without attempting to determine how individual voters voted." What does that mean? This adds an entirely new section that makes it easier to overturn an election. Previously, though, seeking to overturn an election required to show that the alleged fraud actually resulted in a fraudulent win. The new provision lowers the threshold to simply require evidence that alleged fraud could have resulted in a fraudulent win, meaning you no longer have to prove it. So all of you out there, as myself, we all have political enemies. They could use this to overthrow the voice of the people, to overthrow the voice of Texans.

You're not one person when you're here. You're almost 200,000 people. You're the voice of Texas. Do we want to throw out our ability to let the voices be heard through elections? Because if we pass this resolution, we no longer have to prove voter fraud to throw out an election result. We can simply do it.

J. GONZÁLEZ: Representative Bucy, there were some amendments when **SB 7** got voted out on the house floor that were agreed upon, right, and voted out of this body?

BUCY: That's correct.

J. GONZÁLEZ: And were these amendments stripped out in the final version of the bill?

BUCY: I think many of them were.

J. GONZÁLEZ: Do you know why that was?

BUCY: No idea.

J. GONZÁLEZ: In fact, would you agree with me that the bill came back worse?

BUCY: Not only did the bill come back worse, and I think this is what's so important as we talk about this resolution. It's not that the bill is just worse. It's not just that our side versus your side doesn't agree with it. It's that this resolution is adding stuff that we never heard, that we never debated, that we never got to have our constituents come and testify on. This resolution goes outside the bounds of what we dealt with. That means the voices of Texans were not heard in this debate.

J. GONZÁLEZ: And so would you agree that the process circumvented the opportunity for people to be able to give their testimony in committee?

BUCY: You know, absolutely. Going outside the bounds may be within the rules, but it's our job, I think, to do this in the clear of day where our constituents can have their voices heard. And this resolution did not give that opportunity to our constituents.

J. GONZÁLEZ: So the people deserve to have a public hearing on this and we deserve to have that before it getting put into this final piece of legislation that was done behind doors, right?

BUCY: Absolutely.

J. GONZÁLEZ: Did you have an opportunity to review, have time to review?

BUCY: I mean, I think the senate got this late last night, if I remember, based on what I was hearing over there. This is a 20-page outside the bounds resolution. We heard Chairman Turner talk. I don't know when we've seen something that big. To really process it, for the 150 of us to have the time to process that, I think the time has been short. I think I can speak for the whole body of the house that this isn't the bill the house sent over. This resolution takes it way beyond that. And I don't think that was the intent of republicans or democrats on this floor to have this resolution here.

REPRESENTATIVE ANCHIA: So the provision—particularly among all of the offensive provisions of **SB 7**—one of them that we are now seeing for the first time is changing the evidentiary standard and the process for overturning elections, which a judge can do over the will of the people. And you talked about that in your layout. Is that right?

BUCY: That's correct, sir.

ANCHIA: And so I just want to highlight for you, and you're probably aware of this since you've followed this process for a while, that we have multiple members whom at least I've served with that have been seated in this body after special masters have heard their cases. And if I can walk some of those through with you, I'm sure you're familiar with the names.

BUCY: I'd love to know more.

ANCHIA: Hubert Vo, who's in my class, won by 16 votes out of 50,000 votes, and there were rampant—rampant—allegations by his opponent of voter fraud in the Vietnamese community. And a special master was convened in this body, and the evidentiary standard was not only that they had to prove that there were votes that exceeded the margin of victory that had been called into question—and they said there were about 450 or 500 fraudulent votes—but they also had to prove that those votes would have been for Representative Vo. And do you know what the outcome of that special masters convening was?

BUCY: I don't and I think we all need to be reminded.

ANCHIA: So the outcome is that Hubert Vo is here today as a member of the legislature because there was one fraudulent vote that was found by Special Master Hartnett, who's a republican from Dallas County. And do you know what that vote showed?

BUCY: What did it show?

ANCHIA: It showed that a noncitizen had voted, but he wasn't Vietnamese. He was Norwegian, and that person had voted straight ticket republican. And so despite all of the allegations, in this bill we're changing the evidentiary standard for that and suddenly saying a judge can overturn an election just by the allegations of votes in excess of the margin of victory. And I find that troubling, and I hope you do, too.

BUCY: And to understand what you're saying, you're saying under this new standard, Hubert Vo—elected by his constituents to be here and to fight for them—may have been thrown out.

ANCHIA: Exactly right. Exactly right. Same thing happened in the case of Donna Howard, who won an election by four votes over 50,000 cast. And there were widespread allegations of voter fraud there as well. And when they convened a special master, you know how many votes they found that were fraudulent?

BUCY: How many?

ANCHIA: Zero.

BUCY: Zero. But—

ANCHIA: But according to this evidentiary standard—

BUCY: —under this new standard, crying and making accusations could get us thrown out of office that we were elected to.

ANCHIA: And I received a text from my longtime deskmate, Mark Strama of Austin, who had beaten Jack Stick in 2004. We all came in together. And the evidentiary standard that was used by this special master—also Will Hartnett in that case—was that they had to show not only that the margin of victory, those 500 votes that Mark Strama won by, were fraudulent, but they actually also had to show that those votes were for him. And Mark Strama, who served with distinction in this body for 10 years, would not have been seated had we used the evidentiary standard in this bill. Is that right?

BUCY: That's correct.

ANCHIA: And that's a big problem. That subverts democracy. Wouldn't you agree?

BUCY: Absolutely. Members, this resolution will take away the people's voice. It will allow your elections to be overturned because of political enemies. Please vote no on this resolution.

REPRESENTATIVE REYNOLDS: Mr. Bucy, you served on the Elections Committee, correct?

BUCY: That's correct.

REYNOLDS: And you've served on the Elections Committee prior to this session, correct?

BUCY: Yes, that's correct.

REYNOLDS: Okay, and you understand that the out of bounds resolution changes the timeline on when people can vote the Sunday before Election Day. Is that correct?

BUCY: That's correct, and it's disappointing. It's going to be detrimental and it's going to really impact "souls to the polls."

REYNOLDS: And when you talk about the "souls to the polls"—well, first of all, was that even discussed earlier or when did we first see this new change of the time period on Sunday voting that you couldn't vote before 1 p.m.? When did you first see that?

BUCY: I think it was in the last 24 hours or so that we first saw this.

REYNOLDS: Right, so there was no vetting of that. Is that not correct?

BUCY: That's correct. There was no vetting. There was no constituent input.

REYNOLDS: And in fact, it is clear, based upon prior election cycles, that African Americans tend to utilize the "souls to the polls." Is that your understanding?

BUCY: That's correct.

REYNOLDS: And it is your understanding that this would have a likely disparate impact among black, Latino, voters of color in the State of Texas. Is that your understanding?

BUCY: Absolutely.

REYNOLDS: And is it also your understanding that Texas increased significantly in the 2020 election cycle for early voting in person, through mail, and that the "souls to the polls" was a big factor in the African American turnout?

BUCY: That's correct. Please vote no.

REPRESENTATIVE J.E. JOHNSON: Members, I rise in vehement opposition to this resolution allowing the out of bounds on this bill. Governor Abbott's appointed secretary of state herself said several times that the 2020 election in Texas was safe, successful, and secure. Despite that, national figures perpetuated the big lie about the recent election, causing a flurry of pandering actions. A desperate search by our attorney general, coupled with a bounty of a million dollars by our lieutenant governor, produced no founded cases of election fraud in the 2020 election. This bill and the accompanying abuse of process that came with creating this discriminatory legislation has been highly irregular. And that's putting it mildly.

The conference committee has added a provision regarding overturning an election that is truly undemocratic and offensive to the rule of law. It says that the court may declare the election void without attempting to determine how individuals actually voted. This provision allows a lawsuit to overturn an election without having to prove that the fraud actually occurred. Just think about that. Your election can be overturned without the other side being required to prove actual voter fraud. Additionally, the provision lowers the burden of proof to overturn an election. In other words, the election challenger's no longer required to show that fraudulent votes actually resulted in a win. The implications of this are unthinkable. To make matters worse, the provision was not in either the senate or the house version of the bill. This provision has not been subject to review and debate by the public. This provision has not been subject to review

and debate by this body. And the provision has not seen the light of day until the last hours of yesterday. The purpose of the legislative process has been completely subverted by adding a terrible provision under the cover of darkness.

What has happened to process? What has happened to the rules that this body is supposed to care about? We have rules and processes in order to have a just society so that people can have faith and confidence in the laws that govern them. Democracies are based on the rule of law whose formations are based on an open debate and participation and whose enforcement is based on true facts and fairness. When these principles fail, our foundation crumbles into autocracy, dictatorship, and tyranny. Why are we here if we're not going to insist that we have an opportunity to debate and be heard on important legislation?

Make no mistake. The State of Texas will go to court again for this bill. We will waste millions of taxpayer dollars again defending this awful piece of legislation that seeks to disenfranchise so many Texas voters. This state has decided again to forego protecting voter rights and straight to restricting them. And this is truly a sad day for the rule of law and the very foundations upon which our democracy rests.

REPRESENTATIVE J. TURNER: You know, as I look at this resolution before us—and I know we've all been incredibly busy over the last several days considering bill after bill and conference committee report after conference committee report, and I find it sometimes difficult to keep up with everything—yet as you have pointed out, we are all confronted here with a very lengthy report and a very lengthy resolution that, frankly, has been difficult for me to fully digest in the time we've had. You've mentioned several provisions already and others have, too. Do you feel that you have been able to adequately understand all of this new material that's being presented to us on very nearly the last day of the session?

J.E. JOHNSON: No, it's been very difficult. When you get—the bill is what, 60-something pages long—and when you get at the very last hour an additional resolution that's 20 pages long of new provisions and new materials that has never been before presented to this body, the Texas House of Representatives, to debate on behalf of all of our constituents, it's unconscionable. And it's unconscionable that we are actually sitting here doing this as opposed to rejecting this move by the senate, saying no, we the house deserve to debate and we're going to honor those rules.

J. TURNER: You know, as I read the resolution, I'm seeing things that I guess are really going to affect large numbers of Texans in the voting and electoral process. There are brand new requirements for anyone who wants to vote by mail, for instance, that are in this resolution before us. And if I understand all this correctly, these are new provisions that have not been a part of this bill during the duration of its passage through the legislature—through the house, the senate, the committee process—up until now. Is that your understanding as well?

J.E. JOHNSON: That is exactly my understanding, sir.

J. TURNER: I see, for instance, that there are going to be new requirements that a person is going to have to place on the outside of an application to vote early. There are new requirements related to what kind of disability is going to qualify for a person that wants to vote by mail on the basis of disability. Would you agree with me that those are exactly the kinds of things that really deserve some detailed scrutiny in our legislative process and not the kind of thing that should be added at the last minute?

J.E. JOHNSON: Well, exactly. You know, the right to vote is the most fundamental piece of our democracy. And this body should be looking for ways to expand everyone's opportunity to vote. We should be having online voter registration. We should have all kinds of opportunities. I do not understand for the life of me why we want to restrict people from mail-in ballot voting. This affects our seniors. This affects our disabled. This affects pregnant women. This affects women with young kids who may not be able to take their children to go vote with them. And I just do not understand why this body and this legislature is trying to make it so hard for these families to go and cast their God-given right to vote in this country.

J. TURNER: I feel, Representative Johnson, as I read some of these provisions, some of them I just don't fully understand exactly what they mean. And, you know, maybe I have time to ask a question or two here briefly in the few remaining hours or minutes that we have, but it's definitely the sort of thing where I'd like to have had the opportunity to really study and consult with others that have read this carefully and can give me an opinion. And one example, here on page 9 of this resolution, it talks about an application to vote by mail. I believe this refers to an application to vote by mail. On line 20 it says, it "must be submitted in writing and signed by the applicant using ink on paper." It's no longer possible to use an "electronic signature or photocopied signature." But as I read that, I actually don't understand if that means only the signature must be in ink or the entire application must be in ink. Do you know the answer to that?

J.E. JOHNSON: I do not. It's a vague question. You're right. Do you have the ability to fill in the blanks and print the application and just hand sign it or are you required to handwrite in the entire application? It's vague on this piece of paper. You and I are both attorneys. We also understand that words matter and precision matters, and this is the kind of thing that's vague. It causes confusion. If you're at home and you're trying to figure out what to do and you're trying to print a ballot, and if somebody thinks they're being great so it can be legible and not confusing based on your handwriting and they print it, is their ballot going to be thrown out? It's hard to tell based on this bill.

J. TURNER: Well, it's just one example and one small provision. But I guess the point that I'm trying to make is there are many of those in this resolution and many of those in the conference committee report that went outside the bounds. And that's what we have in front of us explicitly—material that goes outside of anything else considered in this legislative session so far. So I appreciate your comments about this, Representative Johnson.

BECKLEY: Unlike you, I am not a lawyer, but I am highly offended that we are going to make laws without completely vetting them. How is this going to play out in the courtrooms, do you think?

J.E. JOHNSON: Well, like I said, there's going to be a lot of aspects of this bill that are litigated. There's a lot of issues that are, in my opinion, discriminatory and unconstitutional and then there's vague and ambiguous languages. There's multiple bases by which this bill is going to be challenged in court, and that's going to be at the cost of taxpayers. And unfortunately, we're not going to be able to fund really key programs that the people of Texas want like health care and many other issues because those monies are being spent on wasteful litigation because we are passing a terrible bill.

BECKLEY: And maybe a history class or two about elections and maybe the 1965 voter protection?

J.E. JOHNSON: And maybe a history class or two about elections, that's correct.

BECKLEY: I think that everybody should be concerned, but I'm also concerned that we're just going to vote on this on party lines and there are people in this body who are not paying attention and don't seem to care. Would you agree?

J.E. JOHNSON: I think—you know, I think people in this body care. But it's disheartening how many people will come up to you privately and say, "This is a bad bill for my constituents," but yet won't come to the mic and say so.

[Representative Zwiener raised a point of order against further consideration of **HR 2007** under Rule 13, Section 9(g)(4), of the House Rules on the grounds that the explanation of reasons that suspension of the limitations is being requested lacks the required detail. The point of order was overruled.]

CLARDY: I appreciate the opportunity to close on this important out of bounds resolution. I do want to make a couple of observations just generally about the bill. First, this is a very important bill. This has been worked on for hours and hours—literally dozens of hours—from the conferees on both sides of this building with the senate and with the house. And I do want to thank those conferees, including Representative Collier and Representative Canales. I know that we spent dozens of hours going through this bill, a lot of give and exchange. So I know Representative González wants to ask questions, but this is such an important bill. And when I look at this, there's nearly 20 full pages of out of bounds provisions in this bill that are in this resolution. But that's really less than the total of a 67-page omnibus election bill. So a lot of this was done late. I don't get to control the clock, but I can assure you that the members of the committee did their absolute dead level best to make sure we provided information to all members, including Representative Rose, and that we did everything that we could to make sure this was transparent, that we put all of the copies out at the same time. We went through these things, and we went through these items very, very thoroughly. But again, for those members that weren't on the conference committee, that didn't serve on Elections, that didn't hear some of these same bills in our committee to hear those exact provisions, I think it's important to take my time and work my way through it.

So if I return back to where we were a moment ago—and I'm looking at Section 8.04 of the bill where we amend Section 232.008(b) of the Election Code—we were discussing how this affects election contests in the State of Texas, not just for general elections but for primary elections as well. We changed these deadlines because it became obvious that there are problems in this state where contestants who want to challenge an election don't have ample time to build their case, gather the facts, and present those in a court of law. And so when you look at this, this gives you five more days to challenge in a primary where runoff would occur in 15 more days. So now instead of just 10 days, you have 15 days on a primary, and you have 45 days instead of 30 on that election.

Moving to Section 8.05, we create a special category of election contest based upon fraud. It makes the standard—under Section 232.002—makes the standard for this review of preponderance of the evidence standard. But then what the 232.063 does in Section 8.05 is it codifies that you do not have to have a vote harvester testify how they voted each ballot that was cast so long as you can prove that they cast more illegal ballots than the number by which the contested lost. So you still have to prove fraud in all of those elements.

Now, if we move to Section 8.06, this is something that was discussed to be codified in **HB 6**, but it didn't make it onto the floor. But it is here in the conference report. What it does is in the Election Code, the writs go to the court of criminal appeals as opposed to those that go to the Supreme Court of Texas. And then moving toward the end of those matters that are out of bounds, in Section 8.09 of the bill, it cleans up the expedited docketing for election procedures. And then finally, in Section 9.02, there's a clarification of intent that we think cleans up a provision that was in the senate version, and it requires standardization of the forms concerning felony judgments and the affirmative finding in instructions to the convicted defendant.

J. GONZÁLEZ: Representative Clardy, would you agree with me that **HR 2007** has 22 substantive additions that it adds to **SB 7** that were not either in the senate or the house engrossed versions of **SB 7**?

CLARDY: Let me check one thing. In my count, I had 23, not 22. But I would disagree with your characterization. Many of these had been included as either parts of the house bill—but these were provisions that had been talked about and had been discussed. But there were a number, yes.

J. GONZÁLEZ: And of these 23 substantive changes, do you know which ones of these we actually heard in the House Elections Committee?

CLARDY: You and I were privileged to serve on that committee, and I appreciate you being our vice chairman of that committee. I would have to go through—I'd hate to try to guess. I could probably go one by one and get pretty close. But if you have a number and could suggest how many there were?

J. GONZÁLEZ: Well, I don't have a number, but I do know that they certainly all weren't heard in our Elections Committee. So you probably wouldn't know how many of these we actually voted out of committee?

CLARDY: It is my recollection we voted nearly everything out of the Elections Committee.

J. GONZÁLEZ: Do you know how many of them never saw the light of day in the House Elections Committee? That never even received a hearing?

CLARDY: That number I do not know. I know that there were some times we met and there was no light of day. We were there in the morning when it was dark. But if there's provisions here or sections of these 23 that we didn't hear, I'm unaware of that.

J. GONZÁLEZ: What would you say is the purpose of the committee process?

CLARDY: That's a very fair question. The purpose of the committee process is to allow the members of the committee to get more familiar with the Election Code and to look at those areas that need to be addressed and to make the laws of the State of Texas better. But most importantly, it's an opportunity for members to hear from not just us in this room who have opinions and ideas about the laws but importantly to hear from the citizens of the State of Texas who take the time to come and testify in our committees and express their opinions. And some of those opinions we agree with, and some of those we don't. There's some that you agree with and I agree with and vice versa. But the opportunity of being in a committee, the reason we do that—the reason we have this exchange in public televised for the world to see—is so we can exchange ideas about how we can make elections in Texas fairer, more open, more transparent, but also more secure and preserve the integrity which is vital for a democratic republic to continue to exist.

J. GONZÁLEZ: And I agree with you with the purpose of the committee process. But if some of these bills were never actually heard in committee, then the public never got the opportunity, nor did the committee members get the opportunity, to hear these changes or these substantive changes in this, in **HR 2007**, that never even came before our committee but yet were added to this final version of the bill. So people aren't having the opportunity to give testimony. We didn't have the opportunity to ask questions, to hear from witnesses, to ask questions from the AG to see how certain provisions would be enforced.

CLARDY: Right, and that's a fair point. But I would also say there were a lot of times we had the opportunity as individual members to visit with those witnesses and those stakeholders and those people who are elections professionals throughout the state and are the folks that serve the secretary of state's office or in the Office of the Attorney General. Yes, we've obtained that testimony from witnesses at the hearing, but we also obtained information from people outside of the hearing. And oftentimes, I would challenge any member in this house to say that there were times they served in a committee when, well into the process, they realized this was an idea we should have thought of. I mean, I would like to think we're deliberate and we want to think through. We try to be diligent and capture the ideas early, but sometimes part of the process is to make us think of things that we should have thought of before. And so I certainly don't think it's

appropriate for us to turn a blind eye or a blind ear to ideas that have been brought forward that are appropriate to belong in a bill like this, an omnibus bill that's designed to protect elections in Texas and be fair to all Texans.

J. GONZÁLEZ: Besides the budget and your service here—and I can't recall how many terms you've served, but I know you've been here for quite a few terms, correct?

CLARDY: This is my fifth term we're two days away from completing.

J. GONZÁLEZ: So in your five terms of serving, besides the budget, can you ever recall an outside the bounds resolution that was 20 pages long and made 23 changes to a bill?

CLARDY: Actually, I can beat that. I don't see him on the floor, but I remember Representative Kuempel at one time amended a bill with about 20 pages with about an 80-page amendment where we were going outside of the bounds. But now, I'm sure that was entirely appropriate, and like this bill, was designed to—

J. GONZÁLEZ: So you remember one other time. It doesn't happen very often, right?

CLARDY: You know, I don't want to pick on Representative Capriglione, who's prone to bringing third reading amendments, but the procedures allow what we're doing here to come forth with out of bounds amendments, and that's why we lay this out. We publish it to the members, and it's available for everyone to look at. One of the things I was wanting to address that we just got in last night, which I was unaware of, was the fiscal note on this bill that we've not been able to talk about. And that is a concern, but I think it's not an irreconcilable concern. But we've pushed this information out in a very public and open way. And we have through the start of this process.

J. GONZÁLEZ: Do you recall any elections bills in the past that utilized this many outside the bounds changes?

CLARDY: I don't have a specific recollection. Of course, like you, this was my first time to serve on the Elections Committee. But in prior sessions, I don't remember that. But that's why I wanted to serve on this committee, and I was honored that the speaker allowed me to serve. This is an important issue for all Texans. And so the honor, the opportunity to be here, work with you, work with others, go through the process—I really do feel like we've made good changes here both out of bounds and in the bill itself. I think that we in the house stood firm on the agreements that were made with our colleagues across the aisle before we voted on **HB 6**. And I think the bill as it stands is a very, very good piece of legislation. I believe it will serve the people of Texas well.

[**HR 2007** was adopted by Record No. 1794.]

SB 7 DEBATE - CONFERENCE COMMITTEE REPORT
(Cain, Schofield, Jetton, Klick, and Oliverson - House Sponsors)

[Representative Cain submitted the conference committee report on **SB 7**.]

SB 7, A bill to be entitled An Act relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses; providing civil penalties.

REPRESENTATIVE CAIN: First, I want to publicly apologize to Representative Beckley. On May 7, this body unanimously adopted Floor Amendment No. 20 by Representative Beckley, which contained her bill, **HB 661**. The language would have allowed counties like Denton and Liberty to participate in the countywide polling place program. While the policy of the amendment can hardly be said to be a priority of my party, the amendment was in every draft of the conference committee report. The final legislative council version was delivered very late on May 27. Reviewing the final version, I noticed several things that were supposed to be there were missing. One of those things was her amendment. I gave my word to my former deskmate that I would fight to keep her amendment in the report. I still don't know what happened or why it disappeared. I'm sorry. If the governor calls us back for a special session, I'm committed to hearing and voting on your bill first.

This conference committee report is the product of many meetings and calls between members of both parties and both chambers. The bill contained in this conference committee report seeks to make it easy to vote and hard to cheat. It protects every single Texas voter. Much of the provisions contained herein are designated to clarify existing law and to prevent honest mistakes from being criminalized. Article I, Section 2, of the Texas Constitution provides that, "All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit." To this end, in making our state Constitution, the sovereign people of Texas delegated their lawmaking power to the legislature in relation to election laws. The legislature finds this therein in Article VI, Section 4. **SB 7**, also known as The Election Integrity Protection Act of 2021, is made in furtherance of this constitutional authority.

Section 1.03 contains legislative findings that reflect Floor Amendment No. 2 by Johnson of Harris; as well as Amendment No. 6, Subsections (2) through (4), by Murr, the omnibus amendment crafted by several members of both parties; and parts of Amendment No. 4 by myself and Representative Schofield in response to requests made by the NAACP. Section 1.05 mandates that election officials and public officials strictly construe the Election Code to affect the intent of the legislature, which is found in Section 1.04, which provides that the application of this code and the conduct of elections be uniform and consistent throughout the state to reduce the likelihood of fraud in the conduct of elections, to protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted.

I see Representative Bucy there. Due to time restrictions, I'm going to jump to Article 9 of the bill, which begins on page 61. These sections were drafted to give effect to the intent of Floor Amendment No. 7 by Representative Bucy. Sections 9.01 and 9.02 are made to ensure that persons 18 years of age or older who are convicted of a felony are fully informed of the conviction's effect on

their rights of suffrage. Section 9.03 also contains a new code provision from the house version of this bill found under Subsection (a)(5), which outlaws voting in a federal election held on the same date in this state and another state.

Subsection (c) was intentionally and specifically added to clarify what some courts and local prosecutors have gotten wrong. The crime of illegal voting is intended to target those individuals who intentionally try to commit fraud in our elections by voting when they know they are not eligible to vote. It is not intended to target people who make innocent mistakes about their eligibility and that are facilitated solely by being provided a provisional ballot by a judge, since federal law requires judges to give someone who isn't registered and requests to vote a ballot. To this end, this provision in the conference committee report says that filling out a provisional ballot affidavit is not enough to show that a person knew they were ineligible to vote. For the purpose of legislative intent, this does not actually change existing law, but rather it makes crystal clear that under current law, when an individual fills out a provisional ballot like tens of thousands of Texans do every year, the mere fact that they filled out and signed a provisional ballot affidavit is not enough to show that an ineligible voter knew they were ineligible to vote or that their signature on it is enough. That has always been the case. Again, no one should be prosecuted solely on the basis of filling out a provisional ballot affidavit.

We also, as part of the conference committee report, discussed recommending to the secretary of state that these disclaimers about whether or not a person should fill this out be printed larger and more clearly on provisional ballots, since we can't put our election judges in the position of asking voters questions about their status and making legal decisions. Thus, for purposes of legislative intent, we asked that the secretary of state make the relevant text on the provisional ballot affidavit larger and more conspicuous. In total, these provisions strike a balance between allowing the prosecution of people that intentionally vote illegally while ensuring that people who in good faith cast a provisional ballot but turn out to be mistaken cannot and should not be prosecuted. Such a prosecution, should one occur in the future or have occurred in the past, would, in my opinion, be a grave error. Thus, a reliance on the majority *VanDyke* opinion, issued by the court of criminal appeals. I know the members of the conference committee believe this applies to all cases that have not yet then had a final order. Again, it is our intent to make that clear for everyone.

Before moving on to Article 2 of the bill, which relates to the registration of voters, it should be noted that several provisions that were found in either the house or senate versions were omitted from this report because the provisions have since passed both chambers in order and other bills await the governor's signature. For example, former Section 2.01 of the house version, which ensures that all voter rolls are accurate by requiring the abstract of deceased voters be sent to the appropriate authority within seven days of being created, was passed by Representative Keith Bell in **HB 1264**.

Article 3 relates to the conduct and security of elections. Sections 3.01, 3.02, and 3.04 contain a floor amendment. It was Amendment No. 10 by Representative Minjarez, which contains **HB 752** by Representative Israel. These provisions will save tax dollars by keeping municipalities from spending money on elections when candidates are unopposed. Sections 3.03, 3.12, and 3.13 prevent drive-thru voting, which was already not a type of voting which is the law in Texas. While it's lawful for curbside and that still is under Section 64.009, to be clear, unlike the language used by the senate, the conference language does not outlaw the use of mobile homes or trailers for voting. Moreover, this does not outlaw things such like "souls to the polls."

REPRESENTATIVE COLLIER: I appreciate you being willing to take these questions. I want to go to page 5, line 16. So I was a member of the conference committee and—

CAIN: What page, ma'am?

COLLIER: I'm on page 5, line 16, of the legislative draft ending in 396. Is that the one that you have?

CAIN: Yes, ma'am—page 5, line 16.

COLLIER: I know that we didn't have as much interaction on the conference committee because there were times where I met with Representative Clardy and your lawyer, Elizabeth Bingham or Alvarez. I think that's her name.

CAIN: Yes.

COLLIER: And then I met with Jetton and then sometimes I met with you. But I wanted to be able to make sure that we clear up some questions about the provisions and then also establish the intent, the legislative intent, in these provisions. So if you go to page 5, line 16, you talk about enforcement of voter roll maintenance. So this is requiring the secretary of state to take a proactive step to ensure that the voter rolls match those who are eligible to vote. Is that correct?

CAIN: I believe that's the intent. Yes, ma'am.

COLLIER: Okay, so how would they do that? What does that look like?

CAIN: Well, the bill shows us that. And depending on what part of the code requires certain registrars to do acts, that's exactly what they'll be looking at—for example, a provision we just went over that requires them to report things to the secretary of state within seven days regarding the registry of deceased voters. This would ensure that they did exactly what the secretary of state told them to do.

COLLIER: So that means that the registrar would report to the secretary of state?

CAIN: Well, yes. They would need to. The secretary of state would review those things. And in fact, one of the really, really important provisions of this section is to require that the secretary of state adopt rules and prescribe procedures for the implementation of this section. That way, there's rules to be followed and everyone kind of understands what their duties are. It would prevent the secretary of state from just making things up.

COLLIER: Okay. So if someone has moved in the transition period that they're no longer in that one county—

CAIN: We actually helped fix that by an amendment by Representative John Turner. It's a great amendment. Yes, ma'am.

COLLIER: Okay. So I just want to make sure that there's an opportunity to cure. If there is a transition period that the person has moved, that the secretary doesn't completely drop them off. Rather, the secretary of state will ensure they are registered in the county where they actually live now. Is that right?

CAIN: Under the code—Section 2.02 contains Representative John Turner's floor amendment. That would be Amendment No. 17 which would do that. It would amend Section 15.021 of the Election Code to require that when a registered voter moves to a new county—you know, you might change your license or say no to a jury duty summons by indicating that you moved—the registrar in the old county may not cancel that voter's registration until they've forwarded that registration to the voter's new county of residence.

COLLIER: So if there's a discrepancy between what the secretary of state's records show and the local registrar, who trumps? Which one of them prevails? Which record prevails?

CAIN: Under this exact section, I'm not sure of that, but I would expect that they would look and see which one's accurate and make the determination there. I'm not sure of someone trumping, but I think the goal should be accuracy.

COLLIER: Would they contact the voter to verify?

CAIN: I hope they would contact the voter. They should.

COLLIER: But that's your intent? Is that they would do that?

CAIN: If that's what's needed, yes. I certainly hope they do that.

COLLIER: All right. So if you go to page 6, line 24, here in this provision, this is Section (e): "If the secretary of state determines that a voter registrar has not performed any overt actions in pursuance of compliance with the provisions identified under Subsection (d)(4) . . ." Can you tell me what overt actions look like?

CAIN: Well, I think in determining the meaning of a word, we look to its context. And understanding that the goal of this is not to punish simple mistakes or honest errors but in realizing that an act that is overt, it is intentional. It is trying to get around the law or skirt the law or it is ignoring rules promulgated by the secretary of state in that event.

[Representative Beckley raised a point of order against further consideration of **SB 7** under Rule 13, Section 9(a)(2), of the House Rules on the grounds that the conferees exceeded their jurisdiction by omitting text that was not in disagreement. The point of order was overruled.]

REPRESENTATIVE JETTON: I'm here to speak in favor of **SB 7**. Over the last five months, we've spent countless hours going through a lot of the legislation that was filed, exploring a lot of the different issues that have come up over the

last decades when it comes to elections. We read through the Carter-Baker report of 2005. We heard the testimony from previous sessions dealing with voter ID, with mail-in ballots, with other issues that we've had with our elections over the last couple of decades. And we put together what I believe is a bill that addresses many of those issues.

One of the main issues that we found was issues with mail-in ballots—mail ballot harvesting—and we added legislation that would directly address that and allow the attorney general's office to investigate and prosecute those issues. We also looked at issues dealing with voter assistance fraud, which is a prevalent issue that targets especially those minority communities and communities where people are taken advantage of. And we made sure that there was legislation in there to crack down on that to make sure that we identify those people that were abusing the rights, stealing the votes away from individuals, to make sure that their votes counted.

We also made sure to address issues dealing with the mail-in ballots when it's turned into ballot harvesting or to ballot boards and signature verification committees to make sure that we're protecting those ballots that come back or that their signatures may not match completely, to make sure that there's a driver's license number or the last four of their social security number to also help to identify and ensure that those ballots are counted if those signatures don't match. In addition to that, we made sure that the DPS signatures that are shared with the secretary of state's office are sent down to the counties and that the ballot boards and the signature verification committees had more signatures to verify those mail-in ballots. This helps to ensure that those mail-in ballots, with both the application and the ballots, come from who they say they are. It protects people's votes.

In addition to that, we made sure that we had—we've included statutes dealing with the equipment that we use in our ballots in our polling locations. We made sure that there will be paper backups for every ballot to ensure that if there is a need for an audit, that there's a way to audit those machines, to audit those votes. So the electronic system tallies up those votes and then you have a paper ballot backup to make sure you have—as a voter—have the opportunity to look at that ballot, ensure that's who you want to vote for, and turn it into the machine. In addition to that, we also made sure that during early voting election days, we've extended the minimum hours that you could vote and made sure that those hours were between the hours of 6 a.m. to 9 p.m. on weekdays and expanded it on Sundays as well to make sure that—and also standardized it across the state. This is very important to make sure that people have equal opportunity no matter where they are in the state to go and vote. There should be consistency between the counties. So whether you live in Fort Bend County, Harris County, Montgomery County, Dallas County, there's predictability.

The secretary of state also has new authority to make sure that counties are able to both train and enforce through auditing process, and if the counties decide not to correct their voter rolls, that there is a mechanism for enforcement. This is important to make sure that our voter rolls are accurate. What currently happens is the secretary of state will receive information from the Department of Vital

Statistics dealing with where people live, where they move, and also death records, and this helps. And when you look at that information, if there's definite matches, then they are removed by the secretary of state. And where there's not clear matches, then it's sent down to the counties. This enforcement mechanism is important to ensuring that we have an opportunity to make sure our voter rolls are accurate and up to date. And so I would like to encourage everyone to vote in favor of **SB 7**.

[Representative Geren raised a point of order against further proceedings under Rule 5, Section 5, of the House Rules on the grounds that a quorum was not present on the last roll call. The point of order was sustained.]